

Internal Revenue Service
memorandum

CC:TL-N-6267-88
Brl:CEButterfield

date: MAY 19 1988

to: Regional Counsel, Southeast
Attn: [REDACTED]

CC:SE

from: Director, Tax Litigation Division

CC:TL

subject: [REDACTED]

This responds to your request for technical advice dated May 11, 1988. You requested written confirmation that it is the position of the National Office that the arrangement for sale of capacity between [REDACTED] and [REDACTED] should be treated as a sale of capacity and not as a lease. This confirms that the National Office has reviewed the relationship between the parties and has concluded that the sale of power, sale of capacity, and possessory interests in Plant [REDACTED] are correctly viewed as severable arrangements (not atypical for the industry) and do not represent a lease of [REDACTED]'s [REDACTED] interest to [REDACTED]. Therefore any allocation of expenses under I.R.C. § 277 based on the assumption that [REDACTED] is a lessor should be modified and brought into accord with this position. We understand that the parties treated the costs incurred in the buy-back agreement consistently with this characterization, and that they do not construe the buy-back of capacity as a lease, so there is no continuing disagreement as to its appropriate characterization.

If we may be of further assistance please do not hesitate to contact us.

MARLENE GROSS

By:

Dan Henry Lee

DAN HENRY LEE
Chief, Branch No. 1
Tax Litigation Division

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